

RECEIVED

6:07-CV-1695

LO

OCT 12 2007

ROBERT H. SHERWELL, CLERK  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE, LOUISIANA

15<sup>th</sup> JUDICIAL DISTRICT COURT VERMILION PARISH

STATE OF LOUISIANA

NO. 87386

DIVISION: C

KENNETH LEGE

VS.

WAL-MART STORES, INC., SPECTRUM BRANDS, INC., UNITED INDUSTRIES  
CORP., and CHEMISCO

FILED: \_\_\_\_\_

DEPUTY CLERK

Plaintiff's Original Petition

Plaintiff complains of Wal-Mart Stores, Inc., Spectrum Brands, Inc., United Industries Corp., and CHEMISCO (collectively referred to as "Defendants") and would respectfully show that:

I.

Jurisdiction and Venue

1. Plaintiffs' claims against Defendants arise under the common law of Louisiana.
2. Venue is proper in this Parish because the cause of action arose and the damages were sustained here and Defendants are subject to the Court's jurisdiction.

II.

The Parties

3. Plaintiff is a Louisiana citizen and resident of Vermilion Parish.
4. Defendant Wal-Mart Stores, Inc. is a Delaware corporation which does a substantial amount of business in Vermilion Parish, and may be served through its registered agent, C T Corporation System, 8550 United Plaza Blvd., Baton Rouge, LA 70809.
5. Defendant Spectrum Brands, Inc. is a Missouri entity which does a substantial amount of business in the state of Louisiana, and may be served through its registered agent, C T Corporation System, 120 South Central Avenue, Clayton, MO 63105.
6. Defendant United Industries, Corp. is a Missouri entity which does a substantial amount of business in the state of Louisiana, and may be served through its registered agent, David Breen, at the address 55 Produce Row, St. Louis, Missouri 63102, or wherever he may be found.
7. Defendant CHEMISCO is a Missouri entity which does a substantial amount of business in the state of Louisiana, and may be served through its Vice President at 8494 Chapin Industrial Dr., St. Louis, Missouri 63114.

### III.

#### Introduction

8. Plaintiff brings this action against Defendants for fraud, failure to warn, defective design, and negligence and gross negligence in the manufacture, distribution and sale of a dangerous and defective product, Cutter Insect Repellant Cream, Active Ingredient 50% DEET, EPA Registration No. 121-22. At all times relevant to this action, Defendants misrepresented the safety of the product at issue and negligently manufactured, marketed, advertised, promoted and sold the product as safe for its intended purpose and use.

9. Defendants knew, and/or had reason to know, that the product was not safe for its intended purpose and use at the time of the sale of the product to Plaintiff. The product contained unsafe levels of DEET (chemical name N,N-diethyl-meta-toluanide), which placed the consumer, and more specifically Plaintiff, at risk of serious adverse reactions from the absorption of the product through the skin.

10. As a result of the unsafe levels of DEET in the product, negligent manufacture, marketing, distribution and sale of the product and the inadequate warning, use of the product caused Mr. Lege to suffer serious physical injury.

### V.

#### Factual Allegations

11. In Spring 2005, Plaintiff purchased a package of Cutter Insect Repellent Cream 50% DEET, Bar Code No. 4126070664, E.P.A. No. 121-22 (the "product"), from the Wal-Mart store in Abbeville, Louisiana. The product was manufactured by CHEMISCO, a division of United Industries, Corp. and marketed by Spectrum Brands, Inc. Plaintiff used the product over a period of approximately six months. In September 2005, Plaintiff applied the Cutter cream to his neck and face. After approximately twenty minutes had elapsed, Plaintiff began to suffer from tightness in his throat, shortness of breath, swelling, and redness. Plaintiff called paramedics who transported him to Lafayette General Hospital. Plaintiff was treated for an allergic reaction of unknown origin and released.

12. Plaintiff continues to suffer from symptoms of shortness of breath, tightness in his throat and neurological defects.

13. On or about August 29, 2006, Plaintiff began to investigate whether the application of the Cutter product caused his reaction and resulting symptoms.

14. On September 18, 2006, Plaintiff contacted Spectrum Brands through the emergency contact number and spoke to a representative, Tracy, who stated there were no reports of problems with this product.

15. On September 19, 2006, Plaintiff again contacted Spectrum Brands through the emergency contact number and spoke to a representative, Susan, and filed a report of incident, case no. 1548806. Susan informed Plaintiff that Spectrum Brands discontinued the product in 1995.

16. Defendant CHEMISCO, a division of United Industries, Corp. manufactured and distributed the product which was unsafe for consumer use in accordance with its intended purpose.

17. Defendant Spectrum Brands, Inc. marketed, advertised, promoted and distributed to retail outlets for sale, the product which was unsafe for consumer use in accordance with its intended purpose.

18. Defendant Wal-Mart Stores, Inc. negligently advertised, promoted and sold the product which was unsafe for consumer use in accordance with its intended purpose, to the general public ten years after the product had been discontinued by its manufacturer.

19. The product contained 50% DEET, which is an unsafe level for application to the human body due to the hazards associated with the absorption of such levels of DEET through the skin.

20. Defendants' conduct was purposely committed, and was dangerous, heedless and reckless, without regard to the consequences, safety or rights of Plaintiff and others.

21. Plaintiff suffered and continues to suffer from physical injuries as a result of his use of the product.

## VI.

### Causes of Action

#### Products Liability, Negligence, & Fraud

22. Plaintiff repeats and realleges each allegation contained in this Petition.

23. Defendants CHEMISCO, United Industries, Corp. and Spectrum Brands, Inc. (collectively referred to as "Cutter Defendants") were engaged in the business of developing, manufacturing insect repellent products for the ultimate sale to and use by consumers.

24. Cutter Defendants' product was expected to be and was in fact sold to a

consumer, Plaintiff. At the time when Plaintiff purchased and used the product, its formula was unreasonably dangerous when used in the reasonably expected way of handling, application and/or consumption.

25. Cutter Defendants' product was created, manufactured, distributed in a defective and unsafe condition unreasonable dangerous to any consumer.

26. Defendant Wal-Mart Stores, Inc. negligently advertised, promoted and sold the product that was unreasonably dangerous when used in the reasonably expected way of handling, application and/or consumption.

27. In addition, Cutter Defendants and Wal-Mart Stores, Inc. committed fraud in making false representations of material fact to Plaintiff and other consumers regarding the characteristics of their product. Cutter Defendants and Wal-Mart Stores, Inc. made these false representations with the intent to deceive. Plaintiff justifiably relied on these representations and was injured as a result.

## VII.

### Prayer

Plaintiffs pray for relief and judgment, as follows:

- Compensatory damages against Defendants;
- Actual damages;
- Consequential damages;
- Interest on damages (pre- and post-judgment) in accordance with law;
- Plaintiffs' reasonable attorneys' fees;
- Costs of court;
- Expert witness fees;
- Costs of copies of depositions; and
- Such other and further relief as the Court may deem just and proper.

VIII.

Jury Trial Demanded

Plaintiffs respectfully demand a trial by jury.

Dated: August 14, 2007.

Respectfully submitted,

TOWNSLEY LAW FIRM



REX D. TOWNSLEY  
State Bar No. 12886  
3102 Enterprise Blvd.  
Telephone: (337) 478-1400  
Facsimile: (337) 478-1577

and

Kurt B. Arnold  
State Bar No. 24036150  
Michael E. Pierce  
State Bar No. 24039117  
Arnold & Itkin, LLP  
5 Houston Center  
1401 McKinney Street, Suite 2550  
Houston, Texas 77010  
Telephone: (713) 222-3800  
Facsimile: (713) 222-3850

ATTORNEYS FOR PLAINTIFF

PLEASE SERVE DEFENDANTS AS  
INDICATED IN PARAGRAPH II ABOVE.

VERMILION PARISH, LA.  
FILED THIS DAY  
2007 AUG 20 A 9 45  
Clerk of Court  
*Phyllis Young-Brown*

A TRUE COPY

ATTEST

*Phyllis Young-Brown*  
Deputy Clerk of Court  
Vermilion Parish, LA